

CONTRACT

Between

CITY OF FORT WORTH

and

GARRETT DEMOLITION, INC.

For

**ANNUAL CONTRACT FOR STRUCTURAL DEMOLITION
AND REMOVAL, TRANSPORTATION, AND DISPOSAL OF
ASBESTOS CONTAINING MATERIALS**

ENV 12-10: DEMO

**Transportation & Public Works Department
Environmental Management Division**

JANUARY 2013

STATE OF TEXAS

COUNTY OF TARRANT

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KNOWN ALL BY THESE PRESENTS

ANNUAL CONTRACT FOR STRUCTURAL DEMOLITION
AND REMOVAL, TRANSPORTATION, AND DISPOSAL OF
ASBESTOS CONTAINING MATERIALS

ENV 12-10: DEMO

This Contract is entered into by and between the City of Fort Worth, a home-rule municipality located within Tarrant County, Texas, ("City") acting through Fernando Costa, its duly authorized Assistant City Manager, and Garrett Demolition, Inc. ("Contractor"), acting through Bradley J. Garrett, its duly authorized President.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises and benefits of this Contract, the City and the Contractor agree as follows:

1.

DEFINITIONS

In this contract, the following words and phrases shall be defined as follows:

Change Order means an officially authorized and executed written amendment to a Task Order, issued by the City.

City's Representative means the Assistant Director of Transportation and Public Works, Environmental Management Division, or his designee.

Contract Documents means this contract; Request for Qualifications; attachments, pre-bid amendments, and appendices to the Request for Qualifications; the Contractor's response to the Request for Qualifications; all ancillary documents submitted with the Contractor's response to the Request for Qualifications; Requests for Costs; Task Orders; and other written, printed, typed and drawn instruments that comprise and govern the performance of the work, including, but not limited to, proposal, plans, specifications, maps, blueprints, notice of award, general conditions, special conditions, supplementary conditions, general provisions, special provisions, change orders, any contract amendments and the payment, performance and maintenance bonds, or other such similar documents as may be required for work performed under this contract. The Contract Documents shall also include any and all supplemental agreements approved by the City which may be necessary to complete the work in accordance with

the intent of the plans and specifications in an acceptable manner, and shall also include the additional instruments bound herewith.

NESHAP shall mean the National Emissions Standards for Hazardous Air Pollutants, as described in Title 40 CFR Part 61.

Notice to Proceed means the official letter issued by the City that authorizes Contractor to begin work.

Request for Costs means a project description and other necessary details provided to the Contractor by the City in order to obtain a cost quote or bid for conduct of the project therein described.

Subcontract means a contract between the Contractor for this project and another person or company for any task defined in the scope of work. A purchase order is also considered a subcontract.

Task Order means an officially authorized and executed written description and specification directing the Contractor to perform specific services within the scope of this contract, issued by the City.

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements identified in 30 TAC 335.261:

- (i) batteries, as described in 40 CFR 273.2
- (ii) pesticides, as described in 40 CFR 273.3
- (iii) mercury-containing equipment, including thermostats, as described in 40 CFR 273.4
- (iv) paint and paint-related waste, as described in 335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste) and
- (v) lamps, as described in 40 CFR 273.5

2.

SCOPE OF CONTRACTOR'S SERVICES

As projects arise, the City will send a Request for Costs to all Contractors holding an asbestos abatement and demolition annual contract with the City. The City then will issue a Task Order for the project to the contractor that submitted the lowest bid.

Individual projects will be authorized with a Task Order which shall specify:

1. The scope of work for that project.
2. The time to complete work for that project.
3. The agreed compensation for completion of work as specified for that project.

The scope of work shall include the furnishing of all labor, materials, and equipment necessary to complete the work in accordance with the Task Order for a project and the Contract Documents.

Contractor shall perform, in a good and professional manner, the services contained in the Task Order, consistent with the Contract Documents and in accordance with all applicable federal, state, and local laws, directives, and guidelines.

Any changes to the scope of work shall require a duly authorized Change Order issued by the City.

The City shall not pay for any work performed by Contractor or its subcontractors and/or suppliers that has not been specifically ordered by the City in writing on a duly executed Task Order or Change Order. Contractor shall not be compensated for any work that is verbally ordered by any person and shall rely only upon written authorization to conduct work.

3. SCOPE OF CITY SERVICES

The City agrees to perform the following services:

- A. City shall coordinate with facilities, City departments, and any tenants for access to work site(s).
- B. City shall prepare and revise all notifications necessary to the Texas Department of State Health Services (DSHS) for the work provided herein.
- C. City shall make payment of all applicable DSHS fees.
- D. City shall give timely direction to the Contractor.
- E. City shall render decisions regarding modifications to the Contract and any other issue.

4. TERM

Unless terminated pursuant to the terms herein, this Agreement shall be for a term of one year, beginning upon the date of its execution. In addition, the term may be extended by mutual agreement of the parties, for up to three (3) one-year terms.

5.
INDEPENDENT CONTRACTOR

The City agrees to hire Contractor as an independent contractor, and not as an officer, servant, or employee of the City. Contractor shall have the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors. Nothing herewith shall be construed as creating a partnership or joint venture between the City and Contractor, its officers, agents, employees, and subcontractors; and the doctrine of respondent superior has no application as between the City and Contractor.

6.
COMPENSATION

Section 1.
Generally.

City shall not pay for any work performed by Contractor or its subcontractors, and/or suppliers that has not been specifically ordered by the City in writing by Task Order or Change Order pursuant to the terms of the Contract Documents. Contractor shall not be compensated for any work that is verbally ordered by any person and shall rely only upon written authorization to conduct work.

Section 2.
Task Orders.

City will issue Task Orders to Contractor that detail the work to be performed by the Contractor. Task Orders will include at a minimum a unique Task Order Number, project address, scope of work, date to commence work, time period to complete work and the not to exceed payment amount for the Task.

Contractor will be responsible for coordinating with the Transportation & Public Works Department – Environmental Management Division immediately after receipt of each Task Order which shall specify the start date of abatement and/or demolition activities. The purpose of the coordination will be to assure compliance with the requirements for notification to the Texas Department of State Health Services (DSHS).

Contractor shall begin demolition work on a specific date as specified in the Task Order which corresponds to the DSHS notification.

Contractor shall complete all work specified for each Task within the time specified in the Task Order unless an extension of time is granted in writing due to inclement weather, with any such determination being made in the sole discretion of the City of Fort Worth. A working day is defined as each day exclusive of Saturday, Sunday, and declared holidays as designated by the City of Fort Worth. If a stop work order is issued

by the City, the number of working days shall be tolled until the day the Contractor receives a written notice to resume work issued by the City.

Should the Contractor fail to begin and complete any Task within the specified time, then the City shall have the right in its sole discretion to either (1) demand that the Contractor's surety take over the work and complete same in accordance with the plans, specifications and other Contract Documents or (2) to take charge of and complete the work in such a manner as it may deem proper, and if in the completion thereof, the cost to City shall exceed the contract price, the Contractor and/or its surety shall pay City upon its demand in writing, setting forth and specifying an itemized statement of the total cost thereof, said excess cost.

Section 3. Release Upon Payment

Acceptance by Contractor of said payment shall operate as and shall release the City from all claims or liabilities under this Agreement for anything related to, done, or furnished in connection with the services for which payment is made, including any act or omission of the City in connection with such services.

Section 4. Invoice and Payment.

The Contractor shall provide separate invoices to the City for each assigned Task. All invoices must reflect the Task Order number.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Contractor's invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

7. LIQUIDATED DAMAGES

If Contractor fails to commence and complete work under this Contract within the stipulated time, there shall be deducted from any moneys due or owing Contractor, or which may become due, the sum of \$1,000.00 (one thousand dollars) per day for each day after the date the project was to be completed, until the project is completed. Such sum shall be treated as liquidated damages and not as a penalty, and City may withhold from Contractor's compensation such sums as liquidated damages. The amount of damage to City for delay in completion of the work is difficult to ascertain and the amount of the liquidated damages per day as stated above is reasonably anticipated pecuniary damages for such delay, and is not a penalty.

8.
INDEMNIFICATION

A. Definitions. The following words and phrases shall be defined as follows:

1. "Environmental Damages" shall mean all damages, losses, diminished values, claims, judgments, penalties, fines, liabilities, encumbrances, liens, costs, expenses of investigation, and the defense of any claim, whether or not such claim is ultimately defeated, results in a judgment or order of any kind, or is resolved by any good faith settlement, and of whatever kind or nature, direct or indirect, tangible or intangible, compensatory, exemplary, or punitive, economic or non-economic, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, to the City and any third parties, including without limitation reasonable attorney's and consultant's fees, any of the foregoing which are incurred as a result the Contractor's work, or due to negligence, or arising from a violation of any Environmental Requirements, or arising from strict liability, or an intentional tort, and whether any of the foregoing are attributable to the Contractor, a Subcontractor, a vendor, employee, agent, successor, or assignee and including by way of example but not limited to:
 - a. Damages for personal injury or death, pain and suffering, mental or emotional distress, injury to property of any kind or to natural resources, environmental contamination, or the loss of use or value of property;
 - b. Fees incurred for the services of attorneys, consultants, engineers, contractors, experts, laboratories, and investigators related to any studies, cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring work, civil or criminal defense, or the recovery of any other costs; and
 - c. Liability, claims, or judgments to any third persons or governmental agencies in connection with the items referenced herein.
 - d. Fines, penalties, costs, agreed orders, or settlements to any federal, state, or local government for violations of environmental laws, permits, standards, or regulations.
2. "Environmental Requirements" shall mean the allowable or permissible levels, concentrations, or amounts of materials; all applicable present and future statutes, regulations, rules, permits, plans, or authorizations of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states, and political subdivisions

thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders; and all common law causes of action; all of the above relating to the protection of human health or the environment and being inclusive of, but not limited to:

- a. All requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, facilities, sites, operations, emissions, discharges, releases, or threatened releases of wastes, substances, materials, pollutants, contaminants, hazardous wastes, petroleum products, toxic substances, materials, or other any other regulated or harmful substances whether solid, liquid, or gaseous into the air, surface water, groundwater, stormwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of elements, compounds, materials, substances, pollutants, contaminants, or hazardous or toxic materials, substances, or wastes, whether solid, liquid, or gaseous in nature; and
- b. All requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, facilities, sites, operations, emissions, discharges, releases, or threatened releases of radioactive materials or radiation or electromagnetic fields.
- c. All requirements pertaining to the protection of the environment, natural resources, the health and safety of employees or the public; and
- d. Citizen suits authorized by any federal or state law; and
- e. All common law causes of action related to health, safety, natural resources, and the environment.

B. Environmental Indemnification. CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS, RELEASE, REIMBURSE, AND DEFEND, THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY AND ALL:

1) ENVIRONMENTAL DAMAGES, AS DEFINED HEREIN, THAT ARE RELATED TO ANY ENVIRONMENTAL REQUIREMENTS AS DEFINED HEREIN, INCLUDING ANY ACTS, OMISSIONS, OR LIABILITIES (INCLUDING STRICT LIABILITY) AND

2) VIOLATIONS, ALLEGED VIOLATIONS, SUITS, OR CLAIMS RELATED TO ANY ENVIRONMENTAL REQUIREMENTS AS DEFINED HEREIN, INCLUDING ANY ACTS, OMISSIONS, OR LIABILITIES (INCLUDING STRICT LIABILITY).

- C. **General Indemnification.** CONTRACTOR AGREES TO INDEMNIFY, RELEASE, HOLD HARMLESS, REIMBURSE, AND DEFEND, THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL DAMAGES, LIABILITY, CLAIMS, SUITS, DEMANDS, OR CAUSES OF ACTION THAT ARISE FROM THE CONTRACTOR'S OPERATIONS UNDER THIS AGREEMENT WHEN SUCH ARE CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS, SUCCESSORS, OR ASSIGNS AND WHETHER ARISING FROM NEGLIGENCE, INTENTIONAL TORT, VIOLATION OF A LAW OR DUTY TRIGGERING STRICT LIABILITY, OR BY THE INFRINGEMENT OF ANY PERSON'S PROPERTY, LEGAL, OR CONSTITUTIONAL RIGHT. THIS INDEMNIFICATION EXCLUDES, HOWEVER, DAMAGES WHICH ARE CAUSED BY CLAIMS OR LIABILITIES THAT RESULT SOLELY FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CITY OR ITS EMPLOYEES.
- D. **Express Negligence:** SUBJECT ONLY TO THE LIMITATIONS PROVIDED BY SECTION 2254.0031 OF THE TEXAS GOVERNMENT CODE, IT IS THE INTENTION OF THE PARTIES THAT THE TERMS OF THIS INDEMNITY AGREEMENT, INCLUDING THE GENERAL AND ENVIRONMENTAL INDEMNITY PROVISIONS, SHALL APPLY EVEN IF SUCH INJURY, DEATH OR PROPERTY DAMAGE IS CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL ACT OR OTHER FAULT OF THE CITY OF FORT WORTH OR ITS EMPLOYEES, AGENTS, OFFICERS, OFFICIALS, VOLUNTEERS, CONTRACTORS OR OTHER PERSONS CONNECTED WITH, OR IN PRIVITY WITH, THE CITY OF FORT WORTH.
- E. The obligations of the Contractor related to this general and environmental indemnification shall include, but not be limited to, the burden and expense of reimbursing the City for all fees and costs for defending all claims, suits, and administrative proceedings, even if such claims, suits or proceedings are groundless, false, or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, settlements, penalties or other sums due against such indemnified persons.
- F. Upon learning of a claim, lawsuit, or other liability which Contractor is required hereunder to indemnify, contractor shall provide City with timely notice of same.
- G. The obligations of the Contractor related to this indemnification shall survive the expiration or termination of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder.

9.
INSURANCE

The Contractor certifies it has, at a minimum, current insurance coverage as detailed below and will maintain it throughout the term of this Contract. Prior to commencing work, the Contractor shall deliver to City, certificates documenting this coverage. The City may elect to have the Contractor submit its entire policy for inspection.

A. Insurance coverage and limits:

1. Commercial General Liability Insurance
\$1,000,000 each occurrence; \$2,000,000 aggregate
2. Professional Liability Insurance
Not applicable.

3. Automobile Liability Insurance

Coverage on vehicles involved in the work performed under this contract: \$1,000,000 per accident on a combined single limit basis or: \$500,000 bodily injury each person; \$1,000,000 bodily injury each accident; and \$250,000 property damage.

The named insured and employees of Contractor shall be covered under this policy. The City of Fort Worth shall be named an Additional Insured, as its interests may appear. Liability for damage occurring while loading, unloading and transporting materials collected under the Contract shall be included under this policy.

4. Worker's Compensation
Coverage A: statutory limits
Coverage B: \$100,000 each accident
\$500,000 disease -policy limit
\$100,000 disease -each employee

5. Environmental Impairment Liability (EIL) and/or Pollution Liability \$4,000,000 per occurrence. EIL coverage(s) must be included in policies listed in subsections 1 and 2 above; or, such insurance shall be provided under separate policy(s). Liability for damage occurring while loading, unloading and transporting materials collected under the contract shall be included under the Automobile Liability insurance or other policy(s).

- B. Certificates of Insurance evidencing that the Contractor has obtained all required insurance shall be delivered to the City prior to Contractor proceeding with the Contract.

1. Applicable policies shall be endorsed to name the City an Additional Insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents, and volunteers as respects the Contracted services. .
2. Certificate(s) of Insurance shall document that insurance coverage specified herein are provided under applicable policies documented thereon.
3. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements.
4. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the City. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Contractor's insurance policies. Notice shall be sent to Department of Financial Management Services - Risk Management Division, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.
5. Insurers for all policies must be authorized to do business in the state of Texas or be otherwise approved by the City; and, such insurers shall be acceptable to the City in terms of their financial strength and solvency.
6. Deductible limits, or self-insured retentions, affecting insurance required herein shall be acceptable to the City in its sole discretion; and, in lieu of traditional insurance, any alternative coverage maintained through insurance pools or risk retention groups must be also approved. Dedicated financial resources or Letters of Credit may also be acceptable to the City.
7. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the City as respects the Contract.
8. The City shall be entitled, upon its request and without incurring expense, to review the Contractor's insurance policies including endorsements thereto and, at the City's discretion; the Contractor may be required to provide proof of insurance premium payments.
9. The Commercial General Liability insurance policy shall have no exclusions by endorsements unless the City approves such exclusions.
10. The City shall not be responsible for the direct payment of any insurance premiums required by the contract. It is understood that insurance cost is an allowable component of Contractor's overhead.
11. All insurance required above shall be written on an occurrence basis in order to be approved by the City.

12. Subcontractors to the Contractor shall be required by the Contractor to maintain the same or reasonably equivalent insurance coverage as required for the Contractor. When subcontractors maintain insurance coverage, Contractor shall provide City with documentation thereof on a certificate of insurance. Notwithstanding anything to the contrary contained herein, in the event a subcontractor's insurance coverage is canceled or terminated, such cancellation or termination shall not constitute a breach by Contractor of the contract.

10.
BONDING

Payment and Performance Bonds. Before beginning the work, the Contractor shall be required to execute to the City of Fort Worth a payment bond for Task Orders in excess of \$25,000 and a performance bond if the Task Order is in excess of \$100,000. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or subcontractor to supply labor or material; and in 100% the amount of the Task Order. The performance bond is solely for the protection of the City of Fort Worth, in 100% the amount of the Task Order, and conditioned on the faithful performance by Contractor of the work in accordance with the plans, specifications, and contract documents. Contractor must provide the payment and performance bonds, in the amounts and on the conditions required, within 14 calendar days after issuance of the Task Order.

Requirements for Sureties. The bonds shall be issued by a corporate surety duly authorized and permitted to do business in the State of Texas that is of sufficient financial strength and solvency to the satisfaction of the City. The surety must meet all requirements of Article 7.19-1 of the Texas Insurance Code. All bonds furnished hereunder shall meet the requirements of Chapter 2253 of the Texas Government Code, as amended.

In addition, the surety must (1) hold a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or (2) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the state of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law. Satisfactory proof of any such reinsurance shall be provided to the City upon request. The City, in its sole discretion, will determine the adequacy of the proof required herein.

No sureties will be accepted by the City that are at the time in default or delinquent on any bonds or which are interested in any litigation against the City. Should any surety on the Contract be determined unsatisfactory at any time by the City, notice will be given to the Contractor to that effect and the Contractor shall immediately provide a new surety satisfactory to the City.

11.
WARRANTY

Contractor warrants that it understands the currently known hazards and the suspected hazards which are presented to persons, property and the environment by the work specified in this contract.

Contractor further warrants that it will perform all services under this Contract in a safe, efficient and lawful manner using industry accepted practices, and in full compliance with all applicable state and federal laws governing its activities and is under no restraint or order which would prohibit performance of services under this Contract.

12.
DEFAULT AND TERMINATION

- A. Contractor shall not be deemed to be in default because of any failure to perform under this contract if the failure arises solely from: acts of God, acts of the public enemy, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and extreme meteorological events. Contractor affirms a duty to mitigate any delays or damages arising from such causes.
- B. If Contractor fails to begin work or to complete work within the time specified in a Task Order, City shall have the right to take charge of and complete the work in such a manner as it may deem appropriate. If City's total costs exceed the costs as agreed in the contract documents, the City may deliver to Contractor a written notice of the total excess costs, and Contractor shall reimburse City for such excess costs without delay.
- C. If at any time during the term of this contract the work of Contractor fails to meet the specifications of a Task Order or the Contract Documents, City may notify Contractor of the deficiency in writing. Failure of Contractor to correct such deficiency and complete the work required under this contract or a Task Order to the satisfaction of City within ten days after written notification shall result in termination of this contract at the discretion of the City. All costs and attorneys fees incurred by City in the enforcement of any provision of this contract shall be paid by Contractor.
- D. City may terminate this Contract at its sole discretion and without cause upon thirty (30) days prior written notice to Contractor, and such termination shall be without prejudice to any other remedy the City may have. In the event of termination, any work in progress will continue to completion unless specified otherwise in the notice of termination. The City shall pay for any such work that is completed by Contractor and accepted by the City.
- E. The remedies provided for herein are in addition to any other remedies available to City elsewhere in this contract.

13.
OBSERVE AND COMPLY

Contractor shall at all times observe and comply with all federal, state, and local laws and regulations and with all City ordinances and regulations which in any way affect this Agreement and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations including but not limited to applicable environmental laws. Contractor represents itself as knowledgeable in these matters and no defense of misunderstanding or ignorance thereof shall be considered. Contractor agrees to defend, indemnify and hold harmless City and all of its officers, agents and employees from and against all claims or liability arising out of the violation of any such order, law, ordinance, or regulation, whether it be by itself, its subcontractors, agents, or its employees.

14.
MODIFICATION

No modification of this Contract shall be binding on the Contractor or the City unless set out in writing and signed by both parties. No modification shall be binding upon the City unless signed by the City Manager or an Assistant City Manager of the City of Fort Worth. In no event shall any verbal authorization changing the scope of work or verbal agreements for additional compensation be binding upon the City. Contractor expressly agrees a) not to make changes to its legal, financial, or logistical position on any matter based on any oral representation by an employee, contractor, or agent of the City prior to obtaining a written modification to this contract; b) that it waives any claim based upon reliance or estoppel as a result of acting or not acting due to an alleged oral modification to a material term of the Contract Documents or a Task Order through the City, its employees, contractors, or agents; and c) that it waives any claim for compensation for work performed based upon an alleged oral change to a material term of this contract by the City, its employees, or agents.

15.
RIGHT TO AUDIT

City and Contractor agree that, until the expiration of three (3) years after the final payment under this Contract, the City shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Contract. Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the City shall, until the expiration of three (3) years after final payment under the subcontract, have access to papers and records of such subcontractor involving transactions relating to the subcontract. The term "subcontract" as used herein includes purchase orders.

16.
MINORITY AND WOMAN BUSINESS ENTERPRISE
(M/WBE) PARTICIPATION

In accordance with City Ordinance No. 15530, the City has goals for the participation of minority business enterprises and woman business enterprises ("M/WBE") in City contracts. Contractor agrees to a minimum M/WBE participation of 15% in accordance with its proposal and the aforementioned ordinance. Contractor acknowledges the M/WBE goal established for this Agreement and its commitment to meet that goal. Any misrepresentation of facts (other than a negligent misrepresentation) and/or the commission of fraud by the Contractor may result in the termination of this Agreement and debarment from participating in City contracts for a period of time of not less than three (3) years.

17.
PREVAILING WAGE RATES

Contractor shall comply with TEXAS GOVERNMENT CODE, Chapter 2258, with respect to payment of Prevailing Wage Rates for public works contracts and Contractor shall comply with the Davis –Bacon Act for building and construction trades, and shall comply with the prevailing wage requirements as specified in the RFQ for the project.

A worker employed on a public work by or on behalf of the City of Fort Worth shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and not less than the general prevailing rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the City of Fort Worth.

The contractor who is awarded a public work contract, or a subcontractor of the contractor, shall pay not less than the prevailing wage rates to a worker employed by it in the execution of the contract. A contractor or subcontractor who violates this requirement shall pay to the City of Fort Worth, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract.

This requirement does not prohibit the contractor or subcontractor from paying an employee an amount greater than the prevailing wage rate.

18.
NON-DISCRIMINATION

During the performance of this contract, Contractor shall not discriminate in its employment practices and shall comply with all applicable provisions of Chapter 17, Article III of the Code of the City of Fort Worth.

Contractor agrees not to discriminate against any employee or applicant for employment because of because of age, race, color, religion, sex, disability, national origin, sexual orientation, transgender, gender identity or gender expression in any manner involving employment, including the recruitment of applicants for employment, advertising, hiring, layoff, recall, termination of employment, promotion, demotion, transfer, compensation, employment classification, training and selection for training or any other terms, conditions or privileges of employment.

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.

Contractor also agrees that in all solicitations or advertisements for employees placed by or on behalf of this contract, that Contractor is an equal opportunity employer.

Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

19.
GOVERNING LAW

The City and Contractor agree that the validity and construction of this contract shall be governed by the laws of the State of Texas, except where preempted by federal law.

20.
SEVERABILITY

The provisions of this contract are severable; and if for any reason any one or more of the provisions contained herein are held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this contract, and this contract shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the contract.

21.
RIGHTS AND REMEDIES NOT WAIVED

In no event shall the making by the City of any payment to Contractor constitute or be construed as a waiver by the City of any breach of covenant, or any default which may then exist, on the part of Contractor, and the making of any such payment by the City while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the City with respect to such breach or default. Any waiver by either party of any provision or condition of the contract shall not be construed or decreed to be a waiver of any other provision or condition of this Contract, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver be expressed in writing by the party to be bound.

22.
JURISDICTION AND VENUE

By executing this contract, the parties consent to the Jurisdiction of the State of Texas, and Venue of any suit or cause of action under this contract shall lie in Tarrant County, Texas or the federal courts therein.

23.
NOTICES

Any notices, bills, invoices or reports required by this contract shall be sufficient if sent by the parties in the United States mail, postage paid, to the address noted below:

If to the City: Michael Gange, Assistant Director
 Transportation and Public Works Department
 1000 Throckmorton Street
 Fort Worth, TX 76102

If to the Contractor: Bradley J. Garrett, President
 Garrett Demolition, Inc.
 P.O. Box 633
 Burleson, TX 76097

24.
ASSIGNMENT

The City and Contractor bind themselves and any successors and assigns to this contract. Contractor shall not assign, sublet, or transfer its interest in this contract without written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and Contractor.

25.
NO THIRD-PARTY BENEFICIARIES

This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its own contracts or commitments.

26.
CONTRACT CONSTRUCTION

The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

The headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

27.
ENTIRETY

This contract, the contract documents, and any other documents incorporated by reference herein are binding upon the parties and contain all the terms and conditions agreed to by the City and Contractor, and no other contracts, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. In the event of any conflict between the specific terms of this contract and any other contract documents, then the terms of this contract shall govern.

28.
AUTHORITY AND EXECUTION

By signing this contract Contractor warrants that it has had the opportunity 1) to examine this contract in its entirety, 2) to have its legal counsel examine and explain the content, terms, requirements, and benefits of this contract if Contractor so chooses, and 3) to negotiate the terms of this contract within the bounds of applicable law.

Having had the opportunity to submit its bid and also to specifically negotiate the terms of this contract, Contractor agrees to be bound by this contract and expressly agrees to the terms of this contract, including terms that may vary from those of the Invitation to Bid or the Contractor's proposal.

The signatory to this contract represents that he or she is legally authorized by the Contractor to enter into a binding agreement on behalf of the Contractor.

Remainder of page is intentionally left blank

ATTACHMENT A.

SCOPE OF WORK

Contractor will furnish all labor, materials and equipment necessary to perform demolition and asbestos abatement services as described below and in subsequent Task Orders for specific projects issued by the City to the Contractor.

THERE IS NO GUARANTEE OF ANY WORK UNDER THIS CONTRACT; however, upon specific written authorization by the City, demolition and abatement services may be performed on the following:

- Structures exempt from the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) – such as a single family residences.
- Facilities regulated under the Asbestos NESHAP that contain regulated asbestos containing material (RACM) below thresholds.
- Facilities regulated under the Asbestos NESHAP that require removal of RACM prior to building demolition.
- Facilities regulated under the Asbestos NESHAP that have been declared structurally unsound or in danger of imminent collapse.

Task Orders for demolition and asbestos abatement services may be issued on a per property basis or as a group that may require phasing.

Any and all asbestos related activities must be performed at a minimum in strict adherence to the Texas Asbestos Hazards and Protection Act, NESHAP, and Occupational Safety and Health Administration (OSHA) rules and regulations. If the Contractor provides its own personal sampling pumps and PCM cassettes to the City's Asbestos Consultant then the City's Consultant will perform the laboratory analysis of the PCM cassettes for OSHA monitoring.

All work performed under this Agreement shall be in strict adherence to all applicable federal, state, and local rules and regulations.

PROJECT COORDINATION

Contractor will be responsible for coordinating with the TPW - Environmental Management Division, the start date of demolition to allow for notification to the Texas Department of State Health Services (DSHS). The City of Fort Worth will prepare and submit the DSHS notification and pay all DSHS notification fees.

Upon receipt of a Task Order and prior to demolition, contractor must obtain a wrecking permit to demolish any structures from the Planning and Development Department - (817) 392-2222.

In obtaining the wrecking permit, the contractor will be required to abide by City of Fort Worth ordinance number 17228, also known as the "Tree Preservation Ordinance." Under

the preservation ordinance, no tree 6" diameter or greater will be removed and all trees within 50 feet of a structure will be protected as per Tree Ordinance #17228. Removing trees that interfere with construction is permissible while still retaining 50% of existing canopy.

Prior to site mobilization, the contractor must determine the applicability of the Texas Commission on Environmental Quality (TCEQ) and City of Fort Worth Storm Water Rules including the TPDES General Permit No. TXR150000 and receive approval from the City. In addition, the contractor must also submit any required documentation to the TCEQ and the City of Fort Worth. The contractor must maintain compliance with these rules and ensure posting of any required materials is done in such a manner so that the information can readily be obtained by the general public.

SITE PREPARATION

Prior to any abatement or demolition activities, the contractor will remove all universal waste items including light bulbs, mercury-containing devices, paints, pesticides, etc. These items will be properly packaged and disposed by the contractor. The contractor will provide documentation (waste manifest, bill of lading, etc.) that the waste was properly disposed.

Contractor will disconnect all associated air conditioning units and properly evacuate any remaining refrigerant contained within the units prior to being disconnected.

Utilities will have been terminated to the sites. Prior to demolition, the contractor will be responsible for verifying that all utilities (i.e. natural gas, telephone, water, etc.) have been disconnected. Contractor will cut and cap all site utilities at point of connection to the site.

Contractor will be responsible for contacting applicable utility services in order to decide whether or not main lines or routes effectively traverse the project site. It will be determined with the consultation of City staff the best method to address any utility concerns involving the aforementioned utility service issues.

SITE WORK

All structures will be abated of all RACM and will be demolished typically removing all slabs/foundations, utility infrastructure and grading of the parcel to properly manage storm water. In some instances, slabs/foundations may have to remain in place and will be identified by the City on a case by case basis.

Prior to the start of abatement and demolition of any structure, each structure shall be inspected to ensure the safety of the crew.

All debris generated from the removal of RACM is to be disposed of as asbestos-containing waste.

Prior to any site disturbance, the contractor will have implemented stormwater Best Management Practices (BMPs). This may include, but not be limited to, the use of silt fencing, rock check dams, mulching, erosion control blankets, curb and inlet protection devices, sediment traps, sediment basins, and/or stabilized construction entrances and exits.

Contractor shall clean and remove all remaining furniture, household furnishings, building materials, tires, debris, trash, rubbish and any other solid waste from the premises. These materials shall be recycled, reclaimed or disposed at a facility or landfill that is approved to accept such waste.

Contractor shall maintain proper safety fencing, as needed, and also provide for adequate signage, barricades, traffic cones, and "flagmen" during the course of the project when heavy traffic will be leaving or entering the site. Temporary safety fencing to be used shall be a heavy-duty, diamond-link mesh, orange, high density polyethylene safety or security fencing that will withstand substantial weather-related stresses.

The Contractor is responsible for obtaining a City of Fort Worth – Water Department water meter if usage of water from nearby fire hydrants is anticipated.

The work area will be maintained in a manner that will control all demolition debris from becoming windblown and/or migrating from the work area during and after working hours.

The contractor shall use site material, if available, or clean fill from an approved source to fill any holes in the terrain resulting from any of the above work, and grade the entire lot, ensuring that low areas are filled to prevent the pooling of water.

For the duration of the entire project, contractor shall sweep dirt and debris from the haul routes used to ensure any sediment tracked from the site is collected and does not migrate onto City streets.

A specific grass type indigenous to the area will be selected and agreed to depending upon the time of year when the planting will occur. The soil will be analyzed by the contractor in order to determine current nitrogen, phosphoric acid, and potash contents in order to determine the concentration and fertilization rate that should be applied to maximize growth. Soil samples and analytical results must be provided to the City for determining if addition of soil amendments will be necessary. This must be done prior to the dissemination of the applicable indigenous grass seed. The seeded area will be watered by the contractor, as needed, to allow proper establishment of vegetation.

The Contractor will maintain the BMPs and the vegetative area for at least six months, or until a uniform vegetative cover with a minimum of 70 percent coverage has been established and has been accepted by the City for maintenance by others, whichever is earlier.

Once sufficient vegetation has been established, all BMPs will be removed by the contractor and the project will be closed out.

ATTACHMENT B.

COMPENSATION SCHEDULE

THERE IS NO GUARANTEE OF ANY MINIMUM QUANTITY OF WORK UNDER THIS CONTRACT. INDIVIDUAL PROJECTS SHALL BE PERFORMED AS ORDERED ON A TASK ORDER DULY ISSUED BY THE CITY.

Work performed for each Task Order issued shall be compensated on a fixed-price basis, which shall be specified on the Task Order for each project. The compensation amount on the Task Order shall be the bid amount from the contractor for the individual project. Issuance of a Task Order by the City shall constitute acceptance of the Contractor's bid for the project.

- A. The City shall not compensate Contractor in excess of the amount specified in each Task Order unless the City has executed a written, authorized, Change Order. It is expressly agreed between the parties that there shall be no oral modifications to this Contract, Requests for Costs, Bids, or Task Orders issued under this Contract.
- B. Quantities identified in Requests for Costs are estimated quantities only. Prior to submitting a bid for a project, the Contractor is responsible for verifying all quantities upon which the Contractor's bid is based. The Contractor is to rely exclusively upon its own estimates, investigation, research, tests, and other data necessary to supply the full and complete information upon which the Contractor's bid is based. It is mutually agreed that submission of a bid is prima-facie evidence that the Contractor has made all of the investigations, examinations, and tests required to make a fully informed offer.
- C. The parties intend and agree that any change order will be issued only in the case of extraordinary circumstances. Any claims for additional compensation based upon variations between conditions actually encountered in a project and conditions as indicated in the project Task Order will not be allowed. Any claims for additional compensation proposed by Contractor will be examined by the City in consideration of the terms described herein and the Contractors request for additional compensation must clearly show why the variation was not identifiable prior to the Contractor submitting its bid. As used in this contract, "not identifiable" means that the Contractor a) performed all investigation, research, tests, and other data collection necessary to accurately determine quantities, and b) no reasonably possible investigation, research, tests, or other data collection could have identified the variation. The final determination as to additional compensation will be made at the sole judgment and discretion of the City.

The total amount of compensation under this contract shall not exceed \$650,000 in any annual term.

ANNUAL CONTRACT FOR STRUCTURAL DEMOLITION
AND REMOVAL, TRANSPORTATION, AND DISPOSAL OF
ASBESTOS CONTAINING MATERIALS

ENV 12-10: DEMO

IN WITNESS THEREOF, the parties have executed this contract in triplicate in Fort Worth, Texas, on the dates written below.

CITY OF FORT WORTH

BY: *Fernando Costa*
Fernando Costa
Assistant City Manager
Date Signed: 2/18/13

CONTRACTOR
Garrett Demolition, Inc.

BY: *Bradley J. Garrett*
Bradley J. Garrett
President

RECOMMENDED:

Michael A. Gange
Michael A. Gange
Assistant Director
Transportation and Public Works

WITNESS:

Spil Collum

APPROVED AS TO FORM
AND LEGALITY:

Arthur N. Bashor
Arthur N. Bashor
Assistant City Attorney

ATTEST:

Mary J. Kayser
Mary J. Kayser
City Secretary

C-26017
Contract Authorization

12-18-12
Date

